

**California Environmental Protection Agency
AIR RESOURCES BOARD**

Executive Order G-99-008

Independent Administrative Hearing Office

WHEREAS, the Air Resources Board (ARB or Board) has been charged by the Legislature to do such acts as may be necessary for the proper execution of the powers and duties granted to the Board under Division 26 of the Health and Safety Code and by any other provision of law (Health and Safety Code § 39600);

WHEREAS, under Health and Safety Code sections 39515 and 39516, the Executive Officer is appointed by the Air Resources Board and is directed to perform under the direction of the Board the powers, duties, purposes, functions and jurisdiction vested in the ARB;

WHEREAS, under Health and Safety Code section 39516, it is conclusively presumed that any such authority that may lawfully be delegated by the Board has been delegated to the Executive Officer, except those authorities expressly reserved by the Board to itself;

WHEREAS, under Health and Safety Code section 39516, the Executive Officer may redelegate any authority to his or her subordinates except where law or Board rule requires the Executive Officer to act personally;

WHEREAS, the State Administrative Procedure Act at Chapter 4.5, Article 6 of the Government Code, establishes an Administrative Adjudication Bill of Rights that applies to all governing administrative hearing procedures adopted by state agencies;

WHEREAS, the ARB has adopted and recently approved amendments to procedures for Board review of Executive Officer actions (including, but not limited to, motor vehicle recalls under Health and Safety Code section 43105 and sections 2122 et seq., title 13, California Code of Regulations; the revocation or suspension of a license as a vehicle emission test laboratory under section 2048, title 13, California Code of Regulations; and revocation or suspension of motor vehicle certification under chapter 2, part 5, division 26 of the Health and Safety Code) that authorize Board appointed administrative law judges to conduct such hearings (17 CCR §60055.17);

WHEREAS, Health and Safety Code section 43025 et seq. establishes penalties for violations of standards and related requirements for fuels subject to regulations by the ARB;

WHEREAS, Health and Safety Code sections 43028 and 43031(a) provide for the imposition of administrative civil penalties for violations of regulations regarding motor vehicle fuels if the Board has adopted rules and regulations specifying the procedures for imposing those penalties;

WHEREAS, the ARB recently approved adoption of section 60065.1 et seq., title 17, California Code of Regulations, and amendments to section 60075.1 et seq., title 17, California Code of Regulations, establishing procedures for the imposition and assessment of administrative civil penalties under section 43028 of the Health and Safety Code, which require that such hearings be conducted by an administrative law judge appointed by the Board (17 CCR §§ 60075.2, 60075.30, 60065.2 and 60065.21);

WHEREAS, Health and Safety Code section 44011.6 directs the ARB to establish a roadside inspection program for heavy-duty vehicles to identify and require corrective action for such vehicles that emit excessive smoke or that have tampered emission control systems and in subsection (m) directs the ARB to adopt regulations that afford the owner of such vehicle the opportunity for an administrative hearing;

WHEREAS, the ARB adopted and recently approved amendments to section 60075.1 et seq., title 17, California Code of Regulations, establishing the administrative hearing procedures for vehicle owners cited under Health and Safety Code section 44011.6, which require that such hearings be conducted by an administrative law judge appointed by the Board (17 CCR §§ 60075.2 and 60075.30);

WHEREAS, in the interests of good government and to ensure fairness to the parties that appear in administrative hearings involving the ARB, the governing hearing procedures establish an independent Administrative Hearing Office that is staffed by administrative law judges;

WHEREAS, the Administrative Adjudication Bill of Rights (Government Code section 11425.10 et seq.) and the governing procedures adopted by the ARB (title 17, CCR, §§ 60055.12, 60065.12, and 60075.13) provide that a hearing officer is subject to disqualification for bias, prejudice or interest in a proceeding;

WHEREAS, the Administrative Adjudication Bill of Rights provides that no person may serve as the hearing officer in an adjudicative proceeding if that person has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage or is subject to the authority, direction, or discretion of a person who has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage, except that a person who has participated only as a decisionmaker or as an advisor to a decisionmaker in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding or its preadjudicative stage may serve as hearing officer in the proceeding;

WHEREAS, the ARB Administrative Hearing Office shall hear all administrative hearings except those matters that are specifically referred to the State Office of Administrative Hearings (OAH) because of insufficient staffing and other resources that prevent timely consideration of cases;

WHEREAS, pursuant to section 60055.17 of title 17, CCR, a motor vehicle manufacturer may petition the state board for assignment of the case to OAH when it believes that it cannot receive a full and fair hearing before administrative law judges of the ARB Administrative Hearing Office;

WHEREAS, the ARB believes that it is in the best interests of good government, the citizens of this state, and most importantly, the parties that appear in administrative proceedings before the ARB, that ARB take all steps necessary to ensure that all parties receive a full and fair hearing; and

WHEREAS, establishing a structure for conducting administrative adjudications that includes separation between agency investigators, prosecutors, and advocates on the one hand and administrative adjudicators and fact finders of the Administrative Hearing Office on the other is a prudent step that ensures and facilitates unbiased, independent decision making free of any actual or perceived inappropriate influence or interference.

NOW THEREFORE BE IT RESOLVED that there is created within the Air Resources Board the Administrative Hearing Office, which shall be an independent and autonomous unit staffed by one or more administrative law judges appointed by the ARB based on appropriations provided by the Legislature and approved by the Department of Finance through the normal budget change proposal mechanism. Currently there are two ALJ positions assigned to the Administrative Hearing Office.

BE IT FURTHER RESOLVED that the administrative law judge or judges appointed to the Administrative Hearing Office shall be solely responsible for all matters directly and indirectly related to the substantive mission of the office, i.e., the conduct of hearings and issuance of decisions, and, while the office shall report organizationally, for administrative purposes only, through the Administrative Services Division, the administrative law judge or judges shall be responsible for the day-to-day administration of the office; specifically:

Except as provided below for the review of decisions, no office of the ARB will review the work of any administrative law judge appointed by the Board to the Administrative Hearing Office prior or subsequent to the issuance of a decision and review of such decisions shall be exclusively in accordance with the specific provisions of the applicable administrative hearing procedures;

Personnel of the Administrative Hearing Office shall not report to or be subject to the supervision of the Executive Officer, the General Counsel, or his or her deputies, or any division of the ARB having direct or indirect responsibility for investigating, prosecuting or advocating cases before an administrative law judge in the Administrative Hearing Office;

The administrative law judge or judges shall be responsible for the management of the office, including but not limited to work load management and, except as otherwise provided by ARB regulation, case assignment or referral;

Appointment or termination of support personnel shall be the responsibility of the

administrative law judge or judges with the assistance of the Administrative Services Division;

Performance evaluations of personnel within the Administrative Hearing Office shall be conducted internally by the administrative law judge or judges, and shall be provided to the Chief, Administrative Services Division, for concurrence as to form only; and

Actions of personnel in the Administrative Hearing Office shall be subject to the review and approval, without input of the Executive Officer or his deputies including the General Counsel, of the Chief of the Administrative Services Division only with respect to administrative matters involving state funds, such as the office budget, attendance records, travel approvals and expense claims.

IT IS FURTHER ORDERED that Executive Order G-98-069 is superseded by this order.

Executed this _____ day of March, 1999, at Sacramento, California.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer